

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 755 OF 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

4 Whether this case involves a substantial question of
law as to the interpretation of the Constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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M/S. WOOD DRUMS MANUFACTURING CO. & ANR. - Appellant(s)

Versus

SOMIBEN ALIAS SHANTABEN S. MARWADI & ANR. - Respondent(s)

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Appearance :

None for Appellant No.1.

Shri Y.N. Ravani for Appellant(s) : 2.

None for Respondent(s) : 1 & 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 21/08/2007

ORAL JUDGMENT

Shri Yogesh Ravani, learned Counsel for appellant No.2.

None for respondent No.1 though served. None for respondent No.2 though the name of Shri S.N. Soparkar, Advocate, is shown in the Daily Board.

2. The owner and the insurer, being aggrieved by the award dated 30th April, 1991 passed by the learned Motor Accident Claims Tribunal (Auxiliary), Nadiad in M.A.C.P. No.944 of 1985, have filed the present appeal under Section 110D of the Motor Vehicles Act.

3. On being confronted with the legal position that how a joint appeal on behalf of the Insurance Company and the owner is maintainable, Shri Yogesh Ravani, learned Counsel for the Insurance Company, submitted that the name of appellant No.1 be deleted or it be transposed as party respondent No.3. On being asked that in accordance with the law laid down by the Supreme Court, a joint appeal can be made maintainable only after deleting the name of the Insurance Company, the learned Counsel for the appellant-Insurance Company submitted that in the special circumstances of the case, the name of the owner be transposed as party respondent No.3.

4. After taking me through the evidence, the learned Counsel for the appellant-Insurance Company submitted that the learned Tribunal below was unjustified in making the award in the sum of

Rs.1,69,080/- only. From the appeal memo, it is to be seen that for the purpose of Court fees, the appeal is valued at Rs.1,24,080/- and for the purpose of jurisdiction, the appeal is valued at Rs.1,30,000/-, this would mean that to the extent of Rs.45,000/- at least, the Insurance Company is not challenging the award. Once the Insurance Company does not challenge the rashness, negligence and liability of the driver and the owner, then, the Insurance Company cannot be allowed to challenge the liability of the driver and/or owner of the vehicle.

5. So far as the question of quantum is concerned, under Section 96(2) of the Motor Vehicles Act, the Insurance Company is not entitled to take defence, which is not available to it under Section 96 of the Motor Vehicles Act. The question of quantum or the amount, as awarded by the learned Tribunal below, is not one of the defence available to the Insurance Company. If that be so, the appeal on the question of quantum would not be maintainable.

6. In case the Insurance Company is deleted, then, there is no representation for and on behalf of appellant No.1 and the appeal will have to be dismissed for want of prosecution and in case, the request of Shri Yogesh Ravani, learned Counsel for the Insurance Company, is accepted and appellant No.1 is transposed as party respondent, then, no relief can be granted to the Insurance Company.

7. The appeal deserves to and is accordingly dismissed. No costs.

[R.S.Garg, J.]

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